IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3472 OF 2005

Shri Dilip Madanlal Chhabaria ... Petitioner

V/s

Harjender Singh Nagi ... Respondent

Mr. R.D. Misra for the petitioner.

Mr. V.S. Kapse for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 10TH APRIL, 2006

P.C.:

1. Heard advocate for both sides.

2. Rule. Rule made returnable forthwith.

3. The petitioner has preferred this petition against the order passed by the lower appellate Court dated 15.3.2005 dismissing his notice and application for condonation of delay in filing the appeal.

4. The petitioner is the plaintiff who filed the suit for eviction on the ground of arrears of rent and suit

being No.130 of 2004 came to be dismissed. The Misc. Notice No. 130 of 2004 which was taken out for restoration of the said suit also came to be dismissed on 14.7.2004. Being aggrieved by the said order, the petitioner plaintiff lodged the appeal which was found to be delayed. Hence the present petition.

5. It is apparent from the record that the order was passed on 14.7.2004, whereas the application for certified copy was registered on 10.8.2004. Therefore, it is clear that the application itself was made after 30 days as the certified copy was ready on 19.8.2004 and was delivered on 21.8.2004. However, the appeal was lodged on 28.10.2004. It was submitted on behalf of the petitioner that somebody else had collected the certified copy and, therefore, he was compelled to make another application. The learned counsel for the respondent submitted that a false statement was made by the present petitioner before the Trial Court regarding this aspect and, therefore, the petition deserves to be dismissed. However, in view of the facts and circumstances, I am of the view that the matter in dispute should be adjudicated on merits and for that purpose delay is required to be condoned albeit on saddling with proportionate cost.

6. In view of the facts and circumstances, therefore, the Rule is made absolute. The petition is allowed in terms of prayer clause (a) on condition that the cost of Rs.5000/- shall be paid by the petitioner, out of which Rs.2000/- shall be donated to the State Legal Aid Authority and remaining Rs.3000/- shall be paid to the respondent within a period of two weeks from the date of this order.

.....